IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 212 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BOMBAY MERCANTILE CO-OPERATIVE

Versus

JASPALSINGH HAKUMATSINGH

Appearance:

1. Criminal Revision Application No. 212 of 1986

NOTICE SERVED for Petitioner No. 1-2

MS BANNA S DUTTA for Respondent No. 1

MR YUSUF F MANSURI for Respondent No. 2

MR HH PATEL, APP for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/11/2002

ORAL JUDGEMENT

#. The present respondent No.2, had borrowed a sum of

Rs.1,75,000/- from the present petitioner No.1 - Bank for purchase of the truck bearing registration no.GRR-5653 and for which he had entered into an agreement of hypothecation with petitioner No.1 - Bank on 11.1.1984. Term no. (iii) of the said agreement reads as under.

> "(iii) That the Borrower shall not during the continuance of this Agreement, sell, dispose off, pledge or otherwise charge or encumber or part with the possession of the article/vehicle/goods which is/are the subject of this Agreement nor permit any act whereby the security hereinbefore expressly given to the Bank shall be in anywise prejudicially affected."

#. Term (viii) of the said agreement provided as under.

> "(viii) That the Borrower hereby empowers the Bank or any of its officers from time to time authorised by it in that behalf and without previous notice to the Borrower to enter the premises or places of storage or garage whatsoever wherever situated for the purpose of inspection and taking account of the said article/vehicle/goods under hypothecation to the Bank and shall allow the Bank or its agent to value the same. All costs charges and expenses incurred by the Bank of and incidental to such inspection and valuation shall be paid to the Bank forthwith on demand (the Bank's statement being conclusive) and until payment, shall, with interest at the rate aforesaid, be a charge upon the hypothecated article/vehicle/goods. Any such valuation shall be conclusive and binding on the Borrower."

#. As respondent No.2 was not regularly paying the installments of the loan to the Bank, the petitioner bank issued a notice to respondent No.2 and in pursuance of that notice, the respondent No.2 wrote a letter dated 25.10.1985 to the petitioner No. 1-Bank,showing his inability to regularise his account and pay the installments and surrender the vehicle to the Bank.

3.1 Thereafter, the petitioner Bank filed Arbitration Suit No.3642 of 1985 before the Board of Nominees for

recovery of Rs.1,88,829 on 24.10.1985 against respondent no. 2 and his guarantors and obtained some interim order. Thereafter, the Board of Nominee passed an order on 3.1.1986 for sale of the truck and accordingly same was sold and petitioner Bank had issued "sale letter" dated 7.1.1986 to petitioner No.2. Meanwhile, the respondent No.1 filed a Criminal Case No.1239/1985 in the Court of learned Metropolitan Magistrate, Court No.13, Ahmedabad, for issuance of a search warrant with regard to the vehicle in question wherein allegation was made that respondent No.2 had taken away the truck from respondent No.1 for a day on the assurance that he would return the same, but had not thereafter returned the truck to him and that the truck in question was duly purchased by respondent No.1 from respondent No.2. On 28.11.1985 the Metropolitan Magistrate issued a search warrant in the above matter with regard to the vehicle in question. The said Criminal Case was filed against respondent No.2, but thereafter the petitioner Bank also appeared in matter and placed all the relevant documents on record including the Arbitration Suit and order passed therein and papers of sale transaction. The Metropolitan Magistrate, Court No.13, Ahmedabad, considered the merits of the matter and cancelled the order of search warrant vide his order dated 4.1.1986. The respondent No.1, on the very same day i.e. on 4.1.1986 again filed Criminal Case No.1238 of 1985 against respondent No.2 and it has been transferred to the Court of learned Chief Metropolitan Magistrate on 24.3.1986 and at that time notice was issued to the petitioner no. 2 and thereafter passed order on 31.3.1986 whereby petitioner no.2 was directed to hand over the possession of the truck to the respondent No.2 during the pendency and final disposal of that proceeding. Against the same, the present Criminal Revision Application has been preferred.

#. At the time of admission, interim relief was granted by this Court (Coram: B.S.Kapadia, J.) on 10.4.86 and it remained in operation till today. This matter alongwith other matter has been listed in the Board of this Court on 25+26/11/2002.

#. I have heard the learned advocate Mr.H.H.Patel, for the State. Learned advocate for the appellant is not present. Rest of the advocates, who appeared in this matter have chosen not to remain present.

#. I have gone through the record and proceedings alongwith the reasoned order passed by the Court below including the various documentary evidence, which are part of the record and mainly Arbitration Suit

No.3642/1985 alongwith the various orders passed by the Board of Nominee including the permission to sale. From the hypothecation agreement and other documentary evidence, it prima facie appears that the Bank has got power and the same has been exercised by the Bank with the permission of the Board of Nominees and transaction in question has taken place and possession of the truck in question has been handed over to third party. Thereafter present respondent No.2 had filed the above referred criminal case in the Court below praying for search warrant and same has been disposed of. After sometime, for the same prayer, he has filed another criminal case being Criminal Case No. 1238/1985 wherein the Court below has passed the impugned order. This point is well settled by the Apex Court whereby right of the Bank has been accepted. Over and above, the order passed by the Court below is not just, legal and proper looking to all aspects of the matter. Having dismissed the first criminal case, filing of another criminal case on the same day for the same cause with the same prayer and obtaining an order therein, more particularly when the truck in question has already been sold vide permission granted by the Board of Nominees, prima facie shows that the Respondent has tried to convert the civil dispute into criminal one which is nothing but abuse of process of law and suppression of facts of filing the previous complaint and disposing the same on merits.

#. In these circumstances, the order passed by the Court below is required to be quashed and set aside and is quashed and set aside accordingly. The Court below shall dispose of the criminal case accordingly. Rule is made absolute.

#. Record and proceedings be sent back forthwith to the trial court.

(R. P. DHOLAKIA, J.)
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